IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22694 of 2001

Between:

Dr.E.Chandraiah, S/o Kesavulu,
Department of Commerce, Dr.B.R.Ambedkar Open University, Hyderabad

..... PETITIONER

AND

1 Dr.B.R.Ambedkar Open University, Rep by its Registrar,
Jubliee Hills, Hyderabad
2 The Government of Andhra Pradesh, Rep by its Secretary, Department of Higher Education, Secretariat, Hyderabad
3 The University Grants Commission, Bahadurshah Zafar Marq, Rep by its Secretary. New Delhi,

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus by declaring the action of the respondents herein in not refixing the pay scale of the petitioner in Rs.3,700-5,700 (revised Rs.12,00-18,300) on par with directly recruited Asso.Professor as illegal and violative of Art.14 and 16 of Constitution of India and consequently direct the respondents to refix the petitioner pay in the scale of Rs.3,700-5,700 (revised Rs.12,00-18,300) from the date of eligibility and promote the petitioner as Professor from 19.9.99 with all consequential benefits as per the Judgment of this Hon'ble Court in W.A.No.1735/98, dt.21.9.01.

Counsel for the Petitioner: MR.M.R.TAGORE

Counsel for the Respondents No.2: GP FOR HIGHER EDUCATION

Counsel for Respondent No.1: MR.M.RATHNA REDDY

Counsel for Respondent No.3: MR.A.RAJASEKHAR REDDY

The Court made the following :

ORDER:

This writ petition is filed to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus by declaring the action of the respondents herein in not refixing the pay scale of the petitioner in Rs.3,700-5,700 (revised Rs.12,000-18,300) on par with directly recruited Associate Professor as illegal and violative of Art.14 and 16 of Constitution of India and consequently direct the respondents to refix the petitioner's pay in the scale of Rs.3,700-5,700 (revised Rs.12,000-18,300) from the date of eligibility and promote the petitioner as Professor from 19.9.99 with all consequential benefits as per the Judgment of this Hon'ble Court in W.A.No.1735/98, dt.21.9.01.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner herein was initially appointed as a Lecturer of Commerce in Badruka College of Commerce and Arts on 19.09.1983 in the pay scale of Rs.530-1050 and while working as Lecturer, he was selected and appointed as Associate Professor (Lecturer) in the scale of Rs.700-40-1100-50-1600 by proceedings No.32/Admn/Estt I/1983-84, dated 29.12.1983 by the respondent University. In the year 1995, the petitioner got promoted as Associate Professor under Merit Promotion Scheme (for short 'MPS') vide proceedings No.1094/Admn.I/Estt.347/95-96, dated 1.12.1995 in the pay scale of Rs.3,000-5000. It is submitted by the learned Counsel for the petitioner that while promoting to the post of Associate Professor, the service of the petitioner as Lecturer at Badruka College, was not counted as per G.O.Ms.No.905, dated 21.09.1976 and the petitioner made a representation on 17.02.1998. Considering the representation of the petitioner, the 1st respondent issued orders vide proceedings No.906/Admn.I/337/1999-2000, dated 25.10.1999 by counting the petitioner's service from 19.09.1983 and also issued consequential revised orders vide proceedings No.14/A-I/Estt./309/GF/2001-2002, dated 6.4.2001 with effect from 19.09.1991 on completion of eight years service under MPS. While the Assistant Professors (Readers) were appointed by way of direct recruitment, their scale was fixed in the pay scale of Rs.3,700-5,700 (now revised as Rs.12,000-18,300) and whereas the petitioner who was promoted as Assistant Professor under Merit Promotion Scheme on completion of eight years service as Associate Professor,

was allowed to continue in the scale of Senior Lecturer i.e., Rs.3,000-5,000 (now revised as Rs.10,000-15,200), though the duties, responsibilities and qualifications of the direct recruitees and the promotees are one and the same, there is a variation in pay scales between the direct recruitees and the promotees and the same is discrimination, arbitrary and violation of Art.14 and 16 of the Constitution of India. It is further submitted by the learned Counsel for the petitioner that the Associate Professors and Professors of other Universities filed W.P.No.13607/94 before this Court but no relief was granted. Against the same, Writ Appeal No.1735 of 1998 was filed, which was allowed by this Court along with other connected cases, by a judgment dated 21.09.2001. The petitioner has completed eight years of service as Associate Professor (Reader) by 19.09.1999 and fully qualified and eligible for promotion to the post of Professor, as per G.O.Ms.No.208, dated 29.06.1999, from 19.09.1999. In the mean time Proceedings No. F(3)1/94(PS)-6, dt:12.10.2000 was issued by the 3rd respondent instructing that the Commission decided that eight years service as Associate Professor (Reader) in the scale of Rs.3,700-5,700 (Revised Rs.12,000-18,300) must remain for consideration of promotion. As per the G.O.Ms.No.208, dated 19.06.1999 and its amended G.O.No.173, dated 12.12.2000 it is clarified that an Asst. Professor cannot be promoted unless his pay is fixed in the scale of Rs.3,700-5,700 (Revised Rs.12,000-18,300) with 8 years service and on the other hand discriminately the pay of Associate Professor (MPS) was fixed as Rs.3,000-5,000 even though the qualifications, duties and responsibilities prescribed by the UGC are same to the direct recruitees. By virtue of the judgment in the Writ Appeal, the petitioner's pay has to be refixed otherwise, he will not get promotion during his entire career.

Learned Counsel appearing for the petitioner contended that there cannot be any discrimination among the directly recruited persons and the persons who opted for MPS in respect of the pay scales in so far as the functions and duties of the Associate Professor is one and the same and therefore, the petitioner is entitled for the pay scale on par with the pay scale of the direct recruits.

On the other hand, the learned Standing Counsel appearing for the 1st respondent contended that since the petitioner does not have Ph.D. degree, he was given a pay scale of Rs.3,000-5,000 and there was no discrimination in so far as fixing the different pay scales. Hence, he prays to dismiss the writ petition.

Learned Government Pleader opposed the same.

Learned Assistant Solicitor General also opposed the same on the ground that as per the rules, the petitioner is not entitled for the pay scale of Rs.3,700/-. The learned Counsel for the petitioner placed a strong reliance on the judgment of this Court in Writ Appeal No.1735 of 1998, dated 21.09.2001 between Osmania University Teachers Association Vs. State of A.P. rep. by Prl. Secretary, Education Department, in which, this Court held that "in so far as two groups are concerned, in our opinion, they cannot be held to be forming two different classes at all. Only by reason of fortuitous circumstances, one group was admitted to the scale of pay, which is being given to the regularly recruited teachers and another who were not. The discrimination, therefore, is within the same class. In a case of this nature, Articles 14 and 16 of the Constitution shall squarely apply."

There is no dispute about the proportion of law that when there are two different classes the functions and powers of which are one and the same but if two different pay scales are adopted by the respondent, then it will be a discrimination. But in this case the learned Counsel appearing for the 1st respondent contended that even as per the rules, one must have the following qualifications for promotion to the reader (now discriminated as Associate Professor);

1. Must have completed 5 years of service in the Senior Scale;

2. Obtained a Ph.D. degree or has equivalent published; work;

3. Made some mark in the area of scholarship and research as evidenced e.g. by self assessment, reports of references, quality of publications, contribution to educational innovation, design of new courses and curricula and extension activities;

4. After placement in the Senior Scale participated in two refresher courses/summer institutes of approved duration, or engaged in other appropriate; continuing education programmes of comparable quality as ma be specified or approved by the University Grants Commission, and;

5. Possesses consistently good performance appraisal reports.

The learned Standing Counsel appearing for the 1st respondent contended that as per G.O.Ms.No.208, one must have Ph.D., even in the cadre of lecturer, so that he will be eligible for promotion. As per G.O.Ms.No.208, dated 29.06.1999, the eligible teachers are promoted as Associate Professors, but the following criteria has to be followed:

1. He should be in the Revised Scale of pay Rs.12,000-18,300.

2. He should have completed 8 years of service as Reader in the Scale of pay of Rs.3,700-5,700.

3. He must have Ph.D qualification at the level of the cadre of Reader.

So, as per G.O.Ms.No.208, for getting a promotion as Lecturer (Associate Professor), one must have Ph.D. qualification. The rule also shows that an equivalent published work of Ph.D. is also a condition precedent for promotion. It is not specifically stated in the affidavit that the petitioner published any report equivalent to the Ph.D. cadre. Therefore, unless one possess a Ph.D. or equivalent published work, he is not entitled for the pay scale in the grade of Rs.3,700-5,700. Therefore, it is for the 1st respondent to take appropriate decision whether the petitioner has submitted any report equivalent to the Ph.D. and take appropriate decision if he fulfils the norms as per G.O.Ms.No.208, dated 29.06.1999. Then appropriate decision has to be taken by the 1st respondent. It is not known whether the petitioners in the writ appeal were having a Ph.D. degree or equivalent report. Therefore, the Division Bench judgment has no application to the present facts of the case

The writ petition is disposed of with a direction that the respondents shall pass necessary orders in putting the petitioner in the pay scale of Rs.3,700-5,700 (Revised Rs.12000-18,300), if the petitioner is qualified in accordance with the eligibility criteria prescribed in G.O.Ms.No.208, dated 29.06.1999 or any other relevant rules governing the promotion to the Lecturer cadre, if he is otherwise qualified, within two months from the date of receipt of a copy of this order.

K.C. BHANU, J

Dated:27.06.2005

MRKR

To

1 The Registrar, Dr.B.R.Ambedkar Open University,
Jubliee Hills, Hyderabad
2 The Secretary, Government of Andhra Pradesh, Department of Higher Education, Secretariat, Hyderabad
3 The Secretary, University Grants Commission, Bahadurshah Zafar Marq, New Delh.

4 Two C.Cs to the Government Pleader for Higher Education, High Court Buildings, Hyderabad.

5 Two C.D.copies.